



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 5, 1997

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-2657

Dear Ms. Keller:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111417.

You inform us that the State Fire Marshal's office of the Texas Department of Insurance (the "department") received a request for the file concerning a fire that occurred at a certain address on December 24, 1989. You assert that portions of the requested file that contain criminal history record information and private information are excepted from required public disclosure based on section 552.101 of the Government Code.

Section 552.101 of the government Code excepts from required public disclosure information that is made confidential by law, either constitutional statutory, or by judicial decision. You raise section 411.084 of the Government code in regard to portions of the requested file.

Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). "Criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their disposition. Gov't Code § 411.082(2). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions

on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127.

Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565.* Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the criminal history record information that the department must not release to the requestor based on section 552.101.

You assert that the common-law right to privacy of an individual would be violated by the public release of portions of the report. Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

We have reviewed the report. We have marked the information that is excepted from public disclosure based on section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 111417

Enclosures: Marked documents

cc: Mr. Kevin White
White Investigations
2611 North Street
Nacogdoches, Texas 75961
(w/o enclosures)